

EXHIBIT 4 - Excerpt

UNITED STATES BANKRUPTCY COURT OF NEW JERSEY
Case No. 23-12825

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In re: :

:

LTL MANAGEMENT LLC, :

:

Debtor, :

- - - - - -x

LTL MANAGEMENT LLC, :

:

Plaintiff, :

:

v. :

:

THOSE PARTIES LISTED ON APPENDIX A :

TO COMPLAINT and JOHN AND JANE DOES:

1-1000, :

:

Defendants. :

- - - - - -x

April 17, 2023

1:12 p.m.

7 Times Square

New York, NY

VIDEOTAPED AND REMOTE DEPOSITION UPON
ORAL EXAMINATION OF ANDY BIRCHFIELD, ESQ., held
at the above-mentioned time and place, before
Randi Friedman, a Registered Professional
Reporter, within and for the State of New York.

1 A. Birchfield, Esq.

2 APPEARANCES:

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4 Attorneys for Proposed counsel for the
5 official committee of talc claimants
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BY: RICHARD G. HADDAD, ESQ.

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22

23

24

25 (Appearances continued.)

1 A. Birchfield, Esq.

2 (Appearances continued.)

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(Appearances continued.)

1 A. Birchfield, Esq.
2 (Appearances continued.)
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8 BY: CAROL ANN SLOCUM, ESQ.
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19

20 ALSO PRESENT:

21 Paul Baker - Videographer
22 Jerry Curran - Concierge
23 Ted Meadows, Esq.
24 Jim Murdica, Esq.
25

1 A. Birchfield, Esq.

2 STIPULATIONS

3 IT IS HEREBY STIPULATED AND AGREED, by
4 and among counsel for the respective parties
5 hereto, that the filing, sealing and
6 certification of the within deposition shall be
7 and the same are hereby waived;

8 IT IS FURTHER STIPULATED AND AGREED
9 that all objections, except as to form of the
10 question, shall be reserved to the time of the
11 trial;

12 IT IS FURTHER STIPULATED AND AGREED
13 that the within deposition may be signed before
14 any Notary Public with the same force and effect
15 as if signed and sworn to before the Court.

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25

1 A. Birchfield, Esq.

2 MR. VIDEOGRAPHER: Good afternoon. 13:12:46

3 We are going on the record at 1:12 p.m. 13:12:47

4 Eastern Daylight Time on Monday, April 17th, 13:12:51

5 2023. 13:12:54

6 Please note that the microphones 13:12:56

7 are sensitive and may pick up whispering and 13:12:58

8 private conversation. Please mute all 13:13:02

9 cellphones at this time. 13:13:04

10 This is Media Unit 1 of the 13:13:05

11 video-recorded deposition of Andy Birchfield 13:13:06

12 in the matter of LTL Management LLC, filed 13:13:08

13 in the United States Bankruptcy Court, 13:13:13

14 District of New Jersey, Case No. 23-12825. 13:13:14

15 This deposition is being held at Brown 13:13:21

16 Rudnick LLP, located at 7 Times Square, New 13:13:23

17 York, New York. 13:13:26

18 My name is Paul Baker and I am the 13:13:28

19 videographer. The court reporter is Randi 13:13:29

20 Friedman, and we are both from Veritext. 13:13:31

21 Appearances have been noted on the 13:13:34

22 stenographic record. 13:13:36

23 Will the court reporter please 13:13:38

24 swear in the witness. 13:13:47

25 13:13:47

1 A. Birchfield, Esq.

2 * * * 13:13:47

3 ANDY BIRCHFIELD, the witness 13:13:47

4 herein, having been duly sworn, was examined 13:13:47

5 and testified as follows: 13:13:47

6 * * * 13:13:47

7 EXAMINATION 13:13:47

8 BY MR. HAAS: 13:13:47

9 Q Mr. Birchfield, good afternoon. 13:13:48

10 A Good afternoon. 13:13:50

11 Q My name is Eric Haas, on behalf of 13:13:50

12 Johnson & Johnson. We've met before; correct? 13:13:53

13 A Yes. 13:13:56

14 Q Mr. Birchfield, you're a lawyer; 13:13:56

15 right? 13:13:58

16 A Yes. 13:13:58

17 Q Are you affiliated with any law firm? 13:13:59

18 A Beasley Allen Law Firm in Montgomery, 13:14:01

19 Alabama. 13:14:03

20 Q Any other law firms? 13:14:05

21 A No. 13:14:06

22 Q Mr. Birchfield, which of the Beasley 13:14:08

23 Allen partners have been involved in talc 13:14:10

24 litigation or recovery of talc-related claims 13:14:14

25 against Johnson & Johnson or its affiliation? 13:14:18

1 A. Birchfield, Esq.

2 A You're going to test my memory here. 13:14:22
3 Certainly Leigh O'Dell and Ted Meadows. We have 13:14:24
4 had over the course of the last nine years, had a 13:14:27
5 number of law partners that have been involved as 13:14:34
6 well. David Dearing, Ryan Beatty. We've had a 13:14:36
7 former law partner, Daniel Mason Ward, was 13:14:42
8 involved. Maybe other law partners that have 13:14:46
9 been involved as well, but those are the ones 13:14:52
10 that I can think of off the top of my head. 13:14:55

11 Q Okay. Thank you. 13:14:57

12 When I refer to talc-related 13:14:58
13 litigation or talc claims or talc litigation, 13:15:00
14 I'll be referring to the talc litigation against 13:15:03
15 Johnson & Johnson and its affiliates; okay? 13:15:07

16 A Yes. 13:15:10

17 Q How many individuals with talc claims 13:15:10
18 do you and/or Beasley Allen currently represent? 13:15:13

19 A It would be approximately 11,300. 13:15:19

20 Q Now, Mr. Birchfield, of any of those 13:15:32
21 11,300 individuals, are any of them claimants who 13:15:35
22 have not yet filed their claims in any court? 13:15:42

23 A Yes. There would be roughly -- my 13:15:46
24 best understanding is approximately 100 that 13:15:52
25 would have been -- would have been retained 13:15:55

1 A. Birchfield, Esq.

2 and -- during the time of the pendency of 13:16:00

3 bankruptcy, and not filed. 13:16:03

4 Q Why were they not filed? 13:16:06

5 A Because of the pendency of the 13:16:07

6 bankruptcy. 13:16:08

7 Q In other words, because there was an 13:16:09

8 automatic stay -- 13:16:10

9 A Automatic stay. 13:16:11

10 Q -- that precluded you from filing 13:16:11

11 those claims? 13:16:14

12 A Yes. 13:16:14

13 Q Okay. Of the 11,300 claims that 13:16:15

14 Beasley Allen represents, how many of those have 13:16:23

15 been filed in the multi-district litigation 13:16:26

16 pending in New Jersey? 13:16:29

17 A I couldn't give you a precise number. 13:16:33

18 Approximately 5,000. 13:16:35

19 Q So of the 11,200 claims that are 13:16:47

20 filed -- 13:16:51

21 A Let me back up. 13:16:52

22 Q Would you like to correct that? 13:16:54

23 A I think it would probably be closer to 13:16:55

24 6,000. My best estimate. 13:16:57

25 Q Okay. So of the 11,200 claims that 13:17:03

1 A. Birchfield, Esq.

2 you said are filed, how many of those -- 13:17:06

3 A No. I'm sorry. 13:17:10

4 Q Okay. 13:17:11

5 A So you asked how many claimants we 13:17:12
6 represent. 13:17:14

7 Q Right. And you said -- 13:17:14

8 A 11,300. 13:17:15

9 Q Okay. 13:17:17

10 A And you asked how many cases we have 13:17:18
11 that would be ready to be filed or would be filed 13:17:22
12 if -- but for the stay, and that's approximately 13:17:24
13 100. You know, there are -- you know, there are 13:17:28
14 additional claims that are unfiled claims, but 13:17:31
15 would not be -- would not necessarily be cases to 13:17:34
16 be filed, you know, in the immediate term. 13:17:37

17 Q What is the distinction you're making 13:17:42
18 between claims that are not files and claims that 13:17:45
19 are not ready to be filed in the immediate near 13:17:48
20 term? 13:17:51

21 MS. SLOCUM: I'm going to object 13:17:51
22 and instruct the witness to the extent it 13:17:53
23 calls for work product, don't answer the 13:17:54
24 question. 13:17:57

25 THE WITNESS: I will follow the 13:18:03

1 A. Birchfield, Esq.

2 advice of my counsel. 13:18:04

3 BY MR. HAAS: 13:18:04

4 Q Okay. So let me just be clear then. 13:18:05

5 Of the 11,300 claims that you testified that 13:18:08

6 Beasley Allen represents, how many of those have 13:18:14

7 not yet been filed with any court? 13:18:17

8 A So there would be approximately, you 13:18:21

9 know, 5,000 claims that are -- that are unfiled 13:18:23

10 claims. 13:18:28

11 Q So of the 5,000 that are unfiled, 100 13:18:31

12 have not been filed due to the automatic stay? 13:18:36

13 A Right. 13:18:39

14 Q And the remaining 4,900 are not filed 13:18:39

15 for some other reason? 13:18:45

16 A Correct. 13:18:46

17 Q Do those 4,900 other claims constitute 13:19:01

18 viable claims? 13:19:06

19 MS. SLOCUM: Objection. Instruct 13:19:08

20 the witness to the extent it requires work 13:19:09

21 product to be divulged, do not answer the 13:19:12

22 question. 13:19:16

23 MR. HAAS: There has been 13:19:17

24 extensive inquiry about claims in this 13:19:18

25 litigation by the group that Mr. Birchfield 13:19:21

1 A. Birchfield, Esq.

2 is a part, so I am inquiring as to which 13:19:24
3 claims are viable claims and fall within the 13:19:27
4 bucket of claims that he believes are 13:19:30
5 associated with his views of the case. 13:19:37

6 MS. SLOCUM: And that requires him 13:19:39
7 to disclose work product, his analysis of 13:19:40
8 the claims and -- or his firm's analysis and 13:19:43
9 determination of what is viable. 13:19:47

10 BY MR. HAAS: 13:19:49

11 Q Mr. Birchfield, let me ask it this 13:19:49
12 way: 13:19:51

13 Do the 4,900 claims that are not filed 13:19:52
14 for some other reason other than the automatic 13:19:56
15 stay represent claims that are not supportive LTL 13:19:57
16 bankruptcy claims? 13:20:08

17 A Okay. Let me -- a couple of things I 13:20:09
18 need to correct there. 13:20:11

19 First of all, in regards to the -- you 13:20:13
20 know, the 4,900, I was giving you approximate 13:20:15
21 numbers. 13:20:19

22 In regards to, you know, an LTL plan, 13:20:20
23 I haven't seen an LTL plan. I have seen, you 13:20:24
24 know, the term sheet that has been proposed, and, 13:20:29
25 you know, I'm not aware of any of the -- any of 13:20:35

1 A. Birchfield, Esq.

2 those claims that, you know, would be outside of 13:20:40

3 what is -- what's referenced in that -- in the 13:20:44

4 term sheet. But, you know, I would not -- I 13:20:48

5 would not recommend filing some of the types of 13:20:54

6 claims that are referenced in the term sheet. 13:20:57

7 Q Okay. So let me try walking through 13:21:05

8 this one more time, see if we understand what 13:21:08

9 we're talking about here. 13:21:10

10 So you have 11,300 claims that you 13:21:11

11 contend that Beasley Allen represents; correct? 13:21:14

12 A Yes. 13:21:18

13 Q Of those, 6,000 claims are actually 13:21:20

14 filed in the MDL? 13:21:22

15 A Approximately. 13:21:24

16 Q 5,000 are unfiled claims? 13:21:25

17 A Correct, approximately. 13:21:28

18 Q Of the 5,000, 100 are claims that you 13:21:30

19 say would be filed but for the automatic stay? 13:21:33

20 A Right. 13:21:36

21 Q And the other 4,900 balance represents 13:21:37

22 claims that you are not sure whether or not they 13:21:41

23 would be filed? 13:21:45

24 A That's correct. I mean, first of all, 13:21:48

25 I am not personally reviewing these cases and 13:21:53

1 A. Birchfield, Esq.

2 making these decisions, so there are lawyers at 13:21:57
3 Beasley Allen that review these cases. There's 13:22:01
4 staff that collect the medical records. So I'm 13:22:04
5 not -- I'm not personally reviewing these 5,000 13:22:07
6 cases and making decisions. 13:22:11

7 Q So focusing on the 4900 claims, has 13:22:13
8 anyone at Beasley Allen reviewed those claims and 13:22:17
9 determined whether they will be filed? 13:22:20

10 MS. SLOCUM: Objection. I'm going 13:22:21
11 to again instruct not to answer based on 13:22:22
12 work product. 13:22:25

13 MR. HAAS: It's a question of 13:22:25
14 whether. I'm not getting into any 13:22:26
15 attorney-client privilege or work product 13:22:28
16 information. Has anyone done it, so let's 13:22:29
17 start -- 13:22:32

18 MS. SLOCUM: No. You asked 13:22:33
19 whether anybody has determined them to be 13:22:34
20 viable. That was your question. 13:22:36

21 MR. HAAS: I didn't ask that. 13:22:39

22 BY MR. HAAS: 13:22:39

23 Q Has anyone done an analysis to 13:22:40
24 determine whether they can be filed? 13:22:42

25 A So for all of the cases that Beasley 13:22:46

1 A. Birchfield, Esq.

2 Allen has, you know, has taken in, we would -- we 13:22:50
3 would obtain medical records, we would do an 13:22:55
4 evaluation, you know, of those claims. And that 13:22:59
5 would have been done for the vast majority of 13:23:05
6 those claims. I cannot say that it has been done 13:23:08
7 for every claim. If we got a case in last week, 13:23:11
8 you know, it may not have happened. But for the 13:23:15
9 vast majority of the claims, we have -- we 13:23:17
10 obtained the medical records and we're in the 13:23:23
11 process of evaluating those claims. 13:23:25

12 Q Okay. So to circle back, you have as 13:23:27
13 of this time 6,100 claims that you have 13:23:32
14 determined that will or have been filed in court? 13:23:38

15 A Approximately. I'm giving you 13:23:46
16 approximate numbers. 13:23:47

17 Q Approximately. Okay. 6,100. Okay. 13:23:48
18 Now starting with the very first claim 13:23:53
19 that Beasley Allen was engaged with respect to, 13:23:58
20 when was that? 13:24:02

21 A If you want a precise date, I can't 13:24:06
22 give you that. 13:24:08

23 Q Round terms. 13:24:09

24 A I believe that to have been in the 13:24:11
25 2013 time frame. 13:24:13

1 A. Birchfield, Esq.

2 Q Okay. You indicated that there are 13:24:16
3 approximately 6,000 claims in the MDL. By what 13:24:20
4 time frame had Beasley Allen been retained with 13:24:25
5 respect to those 6,000 claims? 13:24:28

6 A Well, it would have been -- it would 13:24:32
7 have been before October of '21. I can't say. I 13:24:35
8 can't say when the last case was retained and was 13:24:39
9 filed in the MDL, but I know it would have been 13:24:43
10 before October of '21. 13:24:45

11 Q And just for a general sense, 13:24:47
12 Mr. Birchfield, what was the time frame in which 13:24:49
13 you acquired those 6,000 claims between 2013 and 13:24:52
14 2021, in general terms? 13:24:56

15 A I really can't answer that question. 13:25:03

16 Q When were the majority of the claims 13:25:04
17 obtained by? 13:25:08

18 A I can't answer that question. We have 13:25:09
19 been taking, you know, cases, you know, from 13:25:13
20 lawyers throughout the -- you know, throughout 13:25:18
21 this period, but I can't tell you, you know -- I 13:25:20
22 can't tell you, you know, how many were in 2014 13:25:24
23 versus '15 versus '16. I don't know that. 13:25:27

24 Q Did you have the majority of the 13:25:31
25 claims by 2018? 13:25:33

1 A. Birchfield, Esq.

2 A I can't say. Probably, but I can't 13:25:39
3 give you a definitive answer. 13:25:41

4 Q Did you have the majority of claims by 13:25:42
5 2019? 13:25:43

6 A Probably so, but I can't say 13:25:47
7 definitively. 13:25:49

8 Q Did you obtain any claims in '20 and 13:25:50
9 '21 of the 6,000 that were filed in the MDL? 13:25:51

10 A I can't say definitively, but I would 13:25:57
11 certainly think so. 13:25:59

12 Q So is it fair to say that you obtained 13:26:03
13 the majority of the claims that have been filed 13:26:05
14 in the MDL by no later than 2019? 13:26:07

15 MS. SLOCUM: Objection. 13:26:10

16 THE WITNESS: When you say 13:26:11
17 "majority," I mean, you're talking about 13:26:12
18 more than 50 percent, I would just have to 13:26:14
19 guess, but I would think most of those cases 13:26:18
20 had been retained by then, but I don't know 13:26:22
21 definitively. 13:26:24

22 BY MR. HAAS: 13:26:25

23 Q So with respect to the 6,000 claims 13:26:28
24 that have been filed in the MDL, those cases are 13:26:31
25 currently stayed; correct? 13:26:36

1 A. Birchfield, Esq.

2 A Yes. 13:26:38

3 Q They have been since October 2021; 13:26:38
4 correct? 13:26:40

5 A Except for a very brief -- 13:26:41

6 Q Two hours? 13:26:43

7 A Yes. 13:26:43

8 Q And you're aware from your 13:26:45
9 participation in the MDL that in September of 13:26:47
10 2020, Judge Wolfson ordered the formation of -- 13:26:51
11 an administration of a common benefit fund for 13:26:54
12 the payment of fees and expenses incurred in 13:26:58
13 connection with the MDL correct? 13:27:01

14 A I'm aware that a common benefit fee 13:27:03
15 order was entered. I couldn't give you the date. 13:27:06

16 Q Sometime around the September 2020 13:27:11
17 time frame? 13:27:13

18 A I don't dispute that. I don't know. 13:27:16

19 Q It was sometime before the LTL 13:27:18
20 bankruptcy was commenced in October of 2021; 13:27:21
21 correct? 13:27:24

22 A Yes. 13:27:24

23 Q And you're generally familiar with the 13:27:25
24 terms of that agreement? 13:27:27

25 A Yes. 13:27:28

1 A. Birchfield, Esq.

2 Q Okay. So pursuant to the common 13:27:29
3 benefit order that Judge Wolfson entered, up to 13:27:36
4 12 percent of any amount recovered on talc claims 13:27:39
5 in the MDL is assigned to a common benefit; 13:27:42
6 right? 13:27:47

7 A Could be, yes. My understanding is 13:27:48
8 it's -- 10 percent fee is 2 percent cost. 13:27:51

9 Q Right. So let's say, for example, in 13:27:55
10 the MDL, if the settlement was obtained for 13:27:58
11 \$8.9 billion, the common benefit fund would be up 13:28:02
12 to \$1.068 billion, which is 12 percent; right? 13:28:07

13 MS. SLOCUM: Objection. You're 13:28:12
14 asking him to speculate as to a settlement 13:28:12
15 in the MDL which did not occur. 13:28:15

16 MR. HAAS: I'm asking him to 13:28:18
17 answer the question of whether or not he 13:28:19
18 would agree that if there's a settlement in 13:28:20
19 the MDL, which is a gross recovery amount in 13:28:21
20 the MDL, up to 12 percent of that would go 13:28:25
21 into the common benefit fund, and that 13:28:30
22 number is, I'll represent for the record, is 13:28:32
23 1.068 billion. 13:28:33

24 MS. SLOCUM: Objection. The 13:28:38
25 court's order states what it is, okay. 13:28:39

1 A. Birchfield, Esq.

2 MR. HAAS: No. If you want to 13:28:42

3 object, object. If you want to instruct him 13:28:43

4 not to answer, do so. 13:28:45

5 BY MR. HAAS: 13:28:46

6 Q Answer the question. 13:28:47

7 A When you say up to that amount, I 13:28:48

8 would agree with that. It would not be that 13:28:50

9 amount because there are -- there were different 13:28:53

10 provisions where firms could agree early on and 13:29:00

11 there would be a lesser percentage. So it's not 13:29:04

12 12 percent across the board. 13:29:07

13 Q You're referring to, let's say, 13:29:08

14 Paragraph 24 of the order, which states that if 13:29:09

15 you participate early on, the contribution 13:29:11

16 percentage would be 8 percent, not 12 percent; 13:29:15

17 right? Is that what you're referring to? 13:29:19

18 A I'm not sure of the paragraph. I 13:29:20

19 didn't review it, you know -- I didn't review it 13:29:22

20 for this deposition. I'm not disputing that. 13:29:26

21 I'm talking to you in terms of -- I'm testifying 13:29:28

22 in terms of in my general understanding of the 13:29:31

23 common benefit. 13:29:34

24 Q So your general understanding is that 13:29:36

25 the range of fees that could be contributed to 13:29:38

1 A. Birchfield, Esq.

2 the common benefit fund is anywhere from 13:29:41

3 8 percent to 12 percent of the gross recovery 13:29:44

4 amount, depending upon whether or not the 13:29:48

5 individual firms were early participation or not? 13:29:51

6 A Yes. 13:29:56

7 Q So that would be anywhere between 13:29:56

8 \$712 million or \$1.068 billion for 8.9 gross 13:29:58

9 recovery amount; right? 13:30:05

10 A I'm trusting your math. I can't do 13:30:08

11 that in my head. 13:30:11

12 Q Okay. 13:30:11

13 A Not quickly, anyway. 13:30:12

14 Q And that gross recovery amount that is 13:30:14

15 put into the common benefit fund is then provided 13:30:19

16 to those firms that provide common benefit work 13:30:25

17 product for the MDL; correct? 13:30:30

18 A As a general rule, you know, that is 13:30:34

19 true. I mean, typically what would happen when a 13:30:36

20 court enters a common benefit assessment award 13:30:39

21 like this, then there would be, you know, a 13:30:42

22 determination, you know, at the back end about, 13:30:45

23 you know, the amount -- the amount of the overall 13:30:50

24 pot, the overall common benefit fund amount. And 13:30:54

25 then that amount would be overseen by, you know, 13:31:00

1 A. Birchfield, Esq.

2 an Article III judge to determine, you know, what 13:31:04
3 is an appropriate, you know, allocation of those 13:31:07
4 funds. And that's -- you know, that is the 13:31:09
5 typical way, you know, that from my experience 13:31:13
6 the common benefit fees are -- you know, are 13:31:16
7 handled. 13:31:19

8 So the first determination is, okay, 13:31:19
9 the order is entered, and the order is entered 13:31:22
10 to -- you know, as an approximation of what would 13:31:25
11 be necessary, the court at the end would 13:31:29
12 determine if that is appropriate, and if so, then 13:31:34
13 begin the allocation process among the lawyers 13:31:37
14 who did the work on behalf of the other 13:31:39
15 claimants. 13:31:42

16 Q And the allocation of that amount 13:31:45
17 among the lawyers that did the work depends upon 13:31:47
18 what common benefit work they did; correct? 13:31:51

19 A Yes. 13:31:54

20 Q Okay. And the plaintiff steering 13:31:54
21 committee that's in the MDL is tasked with the 13:31:58
22 responsibility of identifying who should do that 13:32:02
23 common benefit work; right? 13:32:04

24 A As a general -- as a general 13:32:06
25 principle, yes. 13:32:08

1 A. Birchfield, Esq.

2 Q And Beasley Allen sits on that 13:32:09

3 plaintiff steering committee; correct? 13:32:11

4 A Correct. 13:32:13

5 Q And Beasley Allen to date, you would 13:32:14

6 agree with me, has performed the vast majority of 13:32:19

7 the common benefit work product incurred, 13:32:22

8 according to Beasley Allen, the largest 13:32:24

9 percentage of the common benefit expenses; right? 13:32:28

10 MS. SLOCUM: Objection. That's 13:32:30

11 requiring work product. 13:32:32

12 MR. HAAS: No, it's not. It's a 13:32:35

13 fact. 13:32:36

14 BY MR. HAAS: 13:32:36

15 Q Go ahead, you can answer. 13:32:37

16 MS. SLOCUM: Objection still 13:32:38

17 stands. 13:32:38

18 BY MR. HAAS: 13:32:39

19 Q You can answer. 13:32:39

20 A I'm not trying to avoid or be evasive 13:32:42

21 here in any way. I mean, has Beasley Allen done, 13:32:46

22 you know, a substantial amount of the, you know, 13:32:50

23 the work in the MDL? Yes. Sitting here, me 13:32:53

24 personally, I cannot give you an answer about how 13:32:59

25 much, you know, Beasley Allen has done, you know, 13:33:01

1 A. Birchfield, Esq.

2 versus, you know, Ashcraft & Gerel or Levin 13:33:05

3 Papantonio and Mr. Tisi versus Mr. Golomb. So to 13:33:08

4 say vast majority, I think, is more than -- 13:33:14

5 that's farther than I can go at this point. 13:33:16

6 Q Beasley Allen tracks those amounts; 13:33:18

7 right? 13:33:20

8 A Beasley Allen -- Beasley Allen tracks, 13:33:23

9 you know, the work that we do for the, you know, 13:33:26

10 for the MDL. 13:33:30

11 Q Do you provide any reports? 13:33:31

12 A I don't. 13:33:33

13 Q Do you know whether Beasley Allen 13:33:34

14 does? 13:33:35

15 A I'm not sure. I mean, Ms. O'Dell is 13:33:36

16 co-lead and -- 13:33:41

17 Q Do you have -- 13:33:43

18 A She's co-lead of the MDL. 13:33:43

19 Q You're the head of the mass torts 13:33:45

20 litigation practice at Beasley Allen, are you 13:33:47

21 not? 13:33:47

22 A I am. 13:33:49

23 Q Do you have any sense of whether or 13:33:49

24 not Beasley Allen has a claim to be the largest 13:33:50

25 percentage of the common benefit fund based on 13:33:54

1 A. Birchfield, Esq.

2 fees and work done to date? 13:33:57

3 A That would be the determination of -- 13:34:00

4 of an Article III judge if it is administered 13:34:03

5 through the MDL court. 13:34:07

6 Q Based upon the work done to date, is 13:34:09

7 it Beasley Allen's position that it has 13:34:11

8 undertaken the largest percentage of the common 13:34:16

9 benefit work and incurred the largest percentages 13:34:20

10 of the expenses to date? 13:34:23

11 MS. SLOCUM: Objection. Asked and 13:34:24

12 answered. 13:34:24

13 MR. HAAS: No, it's not. 13:34:25

14 BY MR. HAAS: 13:34:25

15 Q You can answer. 13:34:26

16 MS. SLOCUM: He did. He 13:34:26

17 already -- 13:34:27

18 MR. HAAS: That was not asked. He 13:34:28

19 can answer. 13:34:29

20 MS. SLOCUM: He answered. 13:34:30

21 BY MR. HAAS: 13:34:31

22 Q You can answer. Go ahead. 13:34:32

23 A If you're asking my opinion as we sit 13:34:33

24 here today, my opinion is probably so. 13:34:35

25 Q Yeah. 13:34:38

1 A. Birchfield, Esq.

2 A But I can't say that definitively. 13:34:39

3 Q You're the lead plaintiff counsel in 13:34:40
4 the MDL, aren't you? 13:34:40

5 A We're co-lead. 13:34:43

6 Q You're not going to go to the court 13:34:45
7 and say, "No, no, no, we're not entitled to the 13:34:46
8 biggest percentage"? 13:34:48

9 A But the difference in what you're 13:34:51
10 asking and what I am saying is you're not -- 13:34:52
11 you're saying are you entitled to that. 13:34:56

12 Q No, I understand the process, that you 13:34:59
13 have to basically make your submission. The 13:35:01
14 ultimate determination is made by the 13:35:04
15 administrator. I get that. My question is 13:35:06
16 whether with respect to the work done to date 13:35:09
17 that would qualify you in the threshold inquiry 13:35:10
18 is whether or not Beasley Allen has done most of 13:35:15
19 the work and incurred most of the expenses from 13:35:17
20 your perspective. 13:35:19

21 A So first of all, it would not be -- in 13:35:24
22 my view, it would not be an administrator. It 13:35:26
23 would be an Article III judge that would make the 13:35:29
24 determination. And I do think Beasley Allen -- 13:35:31
25 you could take the position that we've done the 13:35:35

1 A. Birchfield, Esq.

2 majority of the work. Probably so. 13:35:39

3 Q If the Article III judge, in your view 13:35:43
4 as the proper determiner, in the end allocates a 13:35:44
5 portion of that 700 million to over a billion 13:35:50
6 dollars worth of common benefit fees and expenses 13:35:55
7 to Beasley Allen, that would be on top of the 13:36:01
8 attorney fees that you otherwise would be 13:36:03
9 entitled to get; correct? 13:36:05

10 A Partially. 13:36:10

11 Q Because there's a participation 13:36:13
12 percentage that you pay? 13:36:15

13 A Yeah, because part of the fees would 13:36:17
14 be paid, you know, out of the -- you know, of the 13:36:18
15 attorneys' fees portion. And so a substantial 13:36:22
16 amount of the, you know, the common benefit, you 13:36:27
17 know, fund would be, you know, based on our 13:36:29
18 attorneys' fees. So you cannot -- it would be 13:36:33
19 inappropriate to say that that is on top of the 13:36:35
20 attorneys' fees. 13:36:39

21 Q Because under the order you are deemed 13:36:40
22 a participating attorney or participating counsel 13:36:42
23 in the common benefit fund agreement; correct? 13:36:47

24 A Yes. 13:36:49

25 MS. SLOCUM: Objection. 13:36:49

1 A. Birchfield, Esq.

2 BY MR. HAAS: 13:36:50

3 Q So to summarize, Beasley Allen would 13:36:51
4 be entitled to a share of the common benefit fund 13:36:56
5 and a portion of its attorney fees that it 13:36:59
6 otherwise charged; right? 13:37:04

7 A If the court made that determination, 13:37:07
8 yes. 13:37:09

9 Q Okay. And the fees you otherwise 13:37:10
10 charge is a 40 percent contingency fee; correct? 13:37:11

11 A As a general rule, that's true. 13:37:15

12 Q Yes. So it's fair to say that in 13:37:17
13 terms of the relative economic incentives, 13:37:23
14 because Beasley Allen is entitled to those 13:37:29
15 amounts from the common benefit fund outside of 13:37:32
16 bankruptcy, but not entitled to those amounts 13:37:34
17 inside a bankruptcy, that Beasley Allen has an 13:37:38
18 economic incentive to resolve the cases outside 13:37:41
19 of bankruptcy; correct? 13:37:46

20 MS. SLOCUM: Objection. 13:37:47

21 THE WITNESS: No. Our interest -- 13:37:48
22 our interest is getting fair values for our 13:37:54
23 clients, period. And that is our goal. And 13:37:56
24 I have been steadfast. I have been 13:38:02
25 steadfast on the position that we are not -- 13:38:06

1 A. Birchfield, Esq.

2 that I have urged, you know, everyone on our 13:38:09
3 side and we have -- we have maintained the 13:38:12
4 position we are not going to have the common 13:38:15
5 benefit, you know, fee issue become a 13:38:18
6 barrier to getting reasonable resolution, 13:38:21
7 fair values for our clients. 13:38:26

8 BY MR. HAAS: 13:38:27

9 Q We'll come back to that in a moment, 13:38:27
10 but you understand that as a general matter in 13:38:29
11 bankruptcy you would not be entitled to any 13:38:34
12 portion of a common benefit fund that you would 13:38:36
13 be entitled outside of bankruptcy; correct? 13:38:39

14 A No, I do not. 13:38:42

15 MS. SLOCUM: Object. The witness 13:38:44
16 is not here to testify to bankruptcy law. 13:38:45

17 MR. HAAS: He can answer the 13:38:47
18 question. If you want to instruct him not 13:38:47
19 to answer -- 13:38:49

20 MS. SLOCUM: Don't answer the 13:38:50
21 question. 13:38:50

22 BY MR. HAAS: 13:38:51

23 Q Is it your view, Mr. Birchfield, that 13:38:51
24 as a general proposition you are entitled to the 13:38:53
25 common benefit fee in bankruptcy? 13:38:56

1 A. Birchfield, Esq.

2 MS. SLOCUM: Objection. Again, 13:38:59

3 I'll instruct the witness not to answer. 13:39:00

4 He's not here to testify as to -- 13:39:02

5 MS. O'DELL: Please don't 13:39:06

6 interrupt. 13:39:07

7 MR. HAAS: I understand he has his 13:39:07

8 motivation for participating or not 13:39:08

9 participating in the proposed 13:39:10

10 reorganization, and that's what I'm 13:39:12

11 inquiring as to. 13:39:16

12 BY MR. HAAS: 13:39:16

13 Q You can answer the question. 13:39:16

14 MS. SLOCUM: No. I'm instructing 13:39:17

15 the witness not to answer. He's not here to 13:39:17

16 testify as to bankruptcy law on a plan that 13:39:20

17 hasn't been filed. 13:39:22

18 MR. HAAS: A plan has been filed. 13:39:23

19 BY MR. HAAS: 13:39:28

20 Q Again, Mr. -- I'll ask it one more 13:39:28

21 time. If your counsel is going to instruct you 13:39:33

22 not to answer, we can address it later. I 13:39:34

23 usually ask at least three times. If I don't get 13:39:37

24 it on the third time, I move on. 13:39:39

25 A I can't answer. You said you wanted 13:39:41

1 A. Birchfield, Esq.

2 notwithstanding the fact that Beasley Allen has 15:58:32

3 litigated on behalf of talc claimants for 15:58:35

4 decades, you have never record a dime for talc 15:58:37

5 claimants in litigation; correct? 15:58:40

6 MS. SLOCUM: Objection, form. 15:58:42

7 THE WITNESS: We haven't litigated 15:58:43

8 for decades; okay. The litigation is 15:58:44

9 approximately ten years. That's a decade. 15:58:51

10 So that is true, but it's not decades. 15:58:52

11 And -- but we have not -- you know, J&J has 15:58:57

12 not -- has not settled with Beasley Allen 15:59:00

13 any of our claims. 15:59:06

14 BY MR. HAAS: 15:59:09

15 Q And you have lost every single one of 15:59:10

16 the cases you tried, either at trial or on 15:59:11

17 appeal; correct? 15:59:13

18 A No. That's a mischaracterization. I 15:59:15

19 mean, when you -- when you say that, you know, 15:59:17

20 that a verdict is vacated on personal 15:59:23

21 jurisdictional grounds, that is not losing on the 15:59:26

22 merits. Those are still valid claims. 15:59:28

23 Q Mr. Birchfield, in the entire 15:59:30

24 decade plus time -- 15:59:34

25 MR. PLACITELLA: Referee. One 15:59:36

1 A. Birchfield, Esq.

2 we get reasonable compensation. Reasonable 16:26:46

3 values for our clients. 16:26:49

4 BY MS. BROWN: 16:26:51

5 Q Sure, and I understand your position. 16:26:51

6 I'm just talking about kind of what has happened 16:26:52

7 to date, and you would believe that to date, 16:26:55

8 every client whose case Beasley Allen has taken 16:26:57

9 to a trial has gone home with \$0 -- 16:27:02

10 MS. SLOCUM: Objection. 16:27:05

11 BY MS. BROWN: 16:27:06

12 Q -- right? 16:27:07

13 MS. SLOCUM: Asked and answered, 16:27:08

14 like, about 15 times now. 16:27:08

15 THE WITNESS: So Beasley Allen -- 16:27:10

16 for the cases that have gone to trial, none 16:27:12

17 of those -- you know, none of the verdicts, 16:27:14

18 the favorable verdicts, none of those have 16:27:16

19 been paid. None of the defense verdicts 16:27:19

20 have been paid. So it is true there have 16:27:21

21 been no payments on the 11 or 12 plaintiffs 16:27:24

22 that Beasley Allen represents that have gone 16:27:29

23 to trial to date. 16:27:31

24 BY MS. BROWN: 16:27:32

25 Q I want to ask you some questions, sir, 16:27:33